THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO.5945 OF 2007

Dated 11-06-2007

Between:

M/s Standard Electronics …Petitioner

And

Deputy Commissioner (CT)
No.II and another …Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO.5945 OF 2007

O R D E R *(Per the Hon'ble Sri Justice Bilal Nazki):*

Heard learned counsel for the parties and with their consent, the writ petition is being disposed of at this stage.

The order of the first respondent, dated 31-08-2006, revising the assessment pertaining to the year 2000-2001 is assailed by way of this writ petition. Counter and rejoinder have been filed.

Two grounds have been taken to challenge the order passed in the revision. One ground is that the order of assessment has been passed on 16-03-2002, which was communicated to the petitioner-assessee on 22-08-2002. The order in the revision has been passed on 31-08-2006, which is clearly barred by limitation as the revisional order is supposed to be passed within a period of four years as per Section 20(3) of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act").

In the counter it has been stated that it is true that the order of assessment had been passed on 16-03-2002, but it had only been served on the assessee on 03-09-2002, hence, the revisional order passed on 31-08-2006 was well within time of four years in terms of Section 20(3) of the Act.

Learned counsel for the petitioner is not in a position to dispute the fact that the order has been served on the assessee on 03-09-2002. Therefore, on this ground, the writ petition cannot be allowed.

The second contention of the learned counsel for the petitioner is that the issue before the revisional authority was as to under what Entry and at what rate the loud speakers and amplifiers could be taxed for the purpose of the Act. This question is pending before the Tribunal in the petitioner's own case for the previous year and in terms of Section 20 (2-A) of the Act the revisional authority is supposed to wait for the orders of the Tribunal, if the controversy pending before it is also pending before the Tribunal.

This question has already been decided by this Court in a judgment, dated 07-03-2006, in Special Appeal Nos.27 of 2003 and batch, wherein this Court followed the decision of the Full Bench of this Court in ***Indo National Limited vs. Commissioner of Commercial Taxes, A.P., Hyderabad***[1]

Learned Special Standing Counsel for Commercial Taxes submits that the issue before the Tribunal is whether the amplifiers and loud speakers are taxable under Entry-11 of the First Schedule to the Act or under Entry 38-D of the First Schedule to the Act, whereas the petitioner, in the present case, claims that the tax is exigible under Entry 38-B of the First Schedule to the Act.

In our view it is immaterial whether the petitioner claims benefit under Entry 38-B or Entry 38-D of the First Schedule to the Act. The question before the Tribunal essentially is under what Entry and at what rate the loud speakers and amplifiers are taxable and the

question in both the cases as such is same.

The apprehension of the learned Special Standing Counsel for Commercial Taxes is that if the Tribunal decides the matter in favour of the Department, then the State may not be able to revise the order because of period of limitation. In the judgment passed in Special Appeal Nos. 27 of 2003 and batch also we have taken care of such an eventuality and have had held that in such situations, the time spent for waiting for the judgment of the Tribunal should not be calculated for the period of limitation in terms of Section
20 (3) of the Act and the petitioner cannot raise the plea of limitation with respect to the period for which no orders are passed by the revisional authority in consequence of pendency of the matter before the Tribunal.

For these reasons, the impugned order of the revisional authority is set aside and the revisional authority is directed not to proceed with the matter afresh till the matter pending before the Tribunal is decided. The Tribunal may decide the matter expeditiously.

The writ petition is accordingly allowed. No order as to costs.

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Bilal Nazki, J

Dated 11th June, 2007

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S.Ananda Reddy, J

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[1] 136 STC 586